

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 UNITED STATES OF AMERICA) DOCKET NO. 1:17-CR-224-AT-CMS
5)
6) ATLANTA, GEORGIA
7) FEBRUARY 26, 2020
8 V.)
9)
10 ALLEN J. PENDERGRASS,)
11)
12 DEFENDANT.)

13
14
15 TRANSCRIPT OF MOTION HEARING
16 BEFORE THE HONORABLE CATHERINE M. SALINAS
17 UNITED STATES MAGISTRATE JUDGE
18

19 APPEARANCES OF COUNSEL:

20 FOR THE GOVERNMENT: JEFFREY A. BROWN
21 TERESA M. STOLZE
22 OFFICE OF THE U.S. ATTORNEY

23 FOR THE DEFENDANT: SARALIENE DURRETT

24 COURT REPORTER: ANDY ASHLEY
25 1949 U. S. COURTHOUSE
75 TED TURNER DRIVE
ATLANTA, GEORGIA 30303-3361
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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.

1 P R O C E E D I N G S

2 (ATLANTA, FULTON COUNTY, GEORGIA; FEBRUARY 26, 2020
3 IN OPEN COURT.)

4 THE COURT: THIS IS CASE NUMBER 1:17-CR-224. IT'S
5 UNITED STATES VERSUS ALLEN PENDERGRASS. COUNSEL, WOULD YOU
6 STATE YOUR APPEARANCES PLEASE?

7 MR. BROWN: YES, GOOD MORNING, JEFF BROWN ON BEHALF
8 OF THE GOVERNMENT ALONG WITH TERESA STOLZE.

9 THE COURT: GOOD MORNING.

10 MS. DURRETT: GOOD MORNING, YOUR HONOR, SARALIENE
11 DURRETT ON BEHALF OF MR. PENDERGRASS.

12 THE COURT: AND MR. PENDERGRASS IS HERE. GOOD
13 MORNING.

14 THE DEFENDANT: GOOD MORNING, JUDGE.

15 THE COURT: WELL, I APPRECIATE YOU ALL COMING IN. I
16 THOUGHT THIS MOTION MADE SOME INTERESTING ISSUES, AND I WANTED
17 TO MAKE SURE THAT I HAD MY LAW RIGHT, SO I WANTED, IF YOU
18 WOULD, TO HELP ME JUST WORK MY WAY THROUGH THE LAW ON THESE
19 DIFFERENT POINTS.

20 THE FIRST QUESTION I HAVE IS REALLY FOR YOU, MS.
21 DURRETT, ON THE SIXTH AMENDMENT ARGUMENT. WHAT IS YOUR
22 AUTHORITY FOR SAYING THAT THE RIGHT ATTACHES WHEN HE'S ARRESTED
23 ON THE STATE ARREST BECAUSE IT LOOKED TO ME LIKE THE LAW IS
24 PRETTY CLEARLY AGAINST YOU?

25 MS. DURRETT: WELL, I DON'T THINK THE LAW IS AGAINST

1 ME, YOUR HONOR. I THINK THAT THE CASES WHILE YOU MAY NOT HAVE
2 FOUND A CASE WITH THE EXACT SAME SET OF FACTS AS OURS, I THINK
3 THE CASE LAW IS VERY CLEAR THAT THE SIXTH AMENDMENT CAN BE
4 TRIGGERED BY AN ARREST. IT DOESN'T HAVE TO BE AN INDICTMENT.
5 IT DOESN'T HAVE TO BE A COMPLAINT.

6 WE FIND THAT IN MARION WHERE THE COURT SAYS THAT IT
7 HAS TO BE -- YOU HAVE TO BECOME AN ACCUSED, AND YOU BECOME AN
8 ACCUSED WHEN THERE IS EITHER A FORMAL INDICTMENT OR INFORMATION
9 OR ELSE THE ACTUAL RESTRAINTS IMPOSED BY ARREST AND THE HOLDING
10 TO ANSWER FOR A CRIMINAL CHARGE, SO I THINK THAT'S THE FIRST
11 BASIS THERE.

12 NOW I DID CITE SOME CASES IN THE BRIEF, GRAVITT AND
13 AVALOS THAT TALK ABOUT STATE PROSECUTIONS AND FEDERAL
14 PROSECUTIONS, BUT I KNOW THAT THE COURT HAS ASKED IF THERE'S A
15 PARTICULAR CASE ON POINT, AND ALL I CAN SAY IS I COULDN'T FIND
16 A CASE WITH SIMILAR FACTS TO OURS WHERE THERE WAS AN ARREST,
17 AND I WANTED TO DO A TIMELINE FOR THE COURT, BUT MR.
18 PENDERGRASS IS ARRESTED IN SEPTEMBER OF 2013 --

19 THE COURT: JUST SO YOU KNOW I'VE GOT IT CLOSE IN MY
20 MIND.

21 MS. DURRETT: I KNOW YOU DO, BUT I THINK THE
22 IMPORTANT PART IS THE DAY AFTER HIS ARREST ALL OF THE EVIDENCE
23 IN THE CASE --

24 THE COURT: ALL THE ELECTRONIC EVIDENCE I BELIEVE.

25 MS. DURRETT: -- GOES TO THE FEDERAL PROSECUTOR.

1 THE COURT: BUT I THINK IT WAS ONLY THE ELECTRONIC.
2 I SAW THAT, TOO. WELL, I THINK ALL THE ELECTRONIC EVIDENCE
3 WENT TO THE FEDERAL PEOPLE, BUT THERE WAS OTHER STUFF SEIZED,
4 TOO, THAT I DON'T THINK WENT TO THE FEDS. THAT'S WHAT IT
5 LOOKED LIKE TO ME.

6 MS. DURRETT: I DON'T KNOW IF WE HAVE EVIDENCE OF
7 WHERE IT WENT, RIGHT, BUT THAT WAS ONE OF THE REQUESTS THAT WE
8 HAD WAS WE THINK THERE NEEDS TO BE AN EVIDENTIARY HEARING WHERE
9 PEOPLE FROM THE APD TESTIFY OR PEOPLE FROM THE PROSECUTOR'S
10 OFFICE TESTIFY BECAUSE I DON'T KNOW WHERE THAT EVIDENCE WENT.
11 THE ONLY CHAIN OF CUSTODY I GOT WAS FOR THE COMPUTERS THAT WERE
12 SEIZED, AND THEY WERE SENT TO THE FEDERAL INVESTIGATORS. SO
13 THAT HAPPENS IN SEPTEMBER OF 2013.

14 THEN MR. PENDERGRASS IS BROUGHT INTO THIS COURT ON
15 MARCH 6TH, 2014 TO GET A BOND FOR HIS OHIO STATE CASE, SO HE
16 GETS BROUGHT INTO COURT HERE, GIVEN THAT BOND. THEN THERE ARE
17 EMAILS BETWEEN THE U.S. ATTORNEY'S OFFICE, FULTON COUNTY, THE
18 IRS AND THE POSTAL INSPECTORS IN THE SPRING OF 2014, SO THAT
19 WOULD BE MARCH AND MAY THAT WE HAVE IN 2014.

20 AT THE SAME TIME THAT THAT'S HAPPENING, FULTON COUNTY
21 PRETRIAL IS SAYING HEY, ARE YOU GUYS GOING TO PROSECUTE THIS
22 GUY IN FULTON COUNTY BECAUSE IF YOU'RE NOT WE'RE GOING TO LET
23 HIM OFF PRETRIAL RELEASE, AND THERE'S NO RESPONSE. THEN
24 THERE'S THE MEETING PRESUMABLY WITH FULTON COUNTY AND THE U.S.
25 ATTORNEY'S OFFICE.

1 THERE ARE OTHER EMAILS THAT HAPPEN AT THAT TIME WHERE
2 IT'S CLEAR THAT THE FEDERAL GOVERNMENT IS INVESTIGATING THIS
3 CASE --

4 THE COURT: SO THE WAY I'VE WRITTEN -- SO I'VE
5 STARTED WRITING MY FACTS, AND I WROTE THAT AT SOME POINT THE
6 STATE LAW ENFORCEMENT AND PROSECUTORS DECIDED NOT TO PROSECUTE
7 THIS CASE. I THINK WE KNOW THAT NOW AT SOME POINT BECAUSE OF
8 WHAT YOU GOT BACK FROM YOUR SUBPOENAS, AND IT LOOKS LIKE IT
9 MIGHT HAVE HAPPENED IN MAY OF 14, AND THAT WAS ONE OF THE
10 QUESTIONS THAT I'M GOING TO ASK THE GOVERNMENT WHAT'S THE
11 TIMELINE JUST TO KIND OF GET A FEEL FOR IT, BUT EVEN IF THAT'S
12 TRUE, I JUST DON'T THINK THAT WHEN YOU HAVE -- HE WAS NOT
13 ARRESTED BY FEDERAL LAW ENFORCEMENT. SO YOU MUST BE SAYING
14 THAT THE ARREST WAS ESSENTIALLY A FEDERAL ARREST; IS THAT WHAT
15 YOU'RE SAYING?

16 MS. DURRETT: IT WAS CERTAINLY A JOINT ARREST,
17 RIGHT? THEY GO IN WITH THE FEDERAL LAW ENFORCEMENT OFFICERS
18 AND THE STATE LAW ENFORCEMENT OFFICERS, AND I THINK I FILED
19 WITH THE COURT THE LIST OF ALL THE OFFICERS WHO WERE PRESENT AT
20 THE TIME OF ARREST, AND IT CERTAINLY INVOLVES FEDERAL
21 OFFICERS.

22 SO THE IDEA THAT THE FEDS SAID OH, WELL, IT'S A STATE
23 ARREST, WE'RE NOT RESPONSIBLE FOR THAT, AND THEN THEY END UP
24 BRINGING THE EXACT SAME CHARGES THAT ARE OUTLINED IN THE ARREST
25 WARRANT AND SEARCH WARRANT IS LAUGHABLE TO ME. TO BE LIKE

1 WELL, WE WERE PRESENT, WE TOOK PART IN ALL THE INVESTIGATION,
2 WE TOOK CUSTODY OF THE EVIDENCE, HE WAS ARRESTED, WE DIDN'T
3 HAVE ANYTHING TO DO WITH THAT ARREST, IT'S IMPOSSIBLE TO
4 BELIEVE.

5 THE COURT: WELL, I DON'T THINK THAT THEY HAD TO NOT
6 HAVE ANYTHING TO DO WITH IT, BUT WE SEE IT ALL THE TIME WHERE
7 THERE'S A JOINT ARREST, AND WHEN WE'RE ON DUTY I HAVE TO DEAL
8 WITH THE COMPLAINT THAT THE FEDERAL PROSECUTORS COME IN AND
9 FILE SO THEY CAN GET HIM BACK FROM THE STATE IF THE STATE
10 ARRESTS HIM. THAT DID NOT HAPPEN HERE.

11 AND IN GRAVITT, A CASE THAT BOTH SIDES CITED, THERE
12 WAS A COMPLAINT. THERE WAS A FEDERAL COMPLAINT AND A FEDERAL
13 ARREST WARRANT, AND IN THAT CASE THE COURT SAID WELL ONCE THAT
14 HAPPENED IT WAS INCUMBENT UPON THE FEDS TO MOVE THE CASE, AND
15 THEY DIDN'T INDICT HIM, AND I THINK THAT'S WHAT HAPPENED, SO I
16 FELT LIKE THAT'S A DISTINCTION. BECAUSE HERE THERE WERE
17 FEDERAL LAW ENFORCEMENT OFFICERS PRESENT, BUT THEY DIDN'T TAKE
18 THAT NEXT STEP. THEY DIDN'T BRING A COMPLAINT. THEY DIDN'T
19 GET THE ARREST WARRANT, AND THEY DON'T HAVE TO.

20 MS. DURRETT: AND I THINK THAT'S WHY WE NEED AN
21 EVIDENTIARY HEARING TO DETERMINE WHY THAT STEP WAS NOT TAKEN.

22 THE COURT: WHY DOES IT MATTER? DON'T THEY HAVE THE
23 ABILITY -- THERE'S A STATUTE OF LIMITATIONS THAT THEY CAN --

24 MS. DURRETT: RIGHT, BUT, YOUR HONOR, I DO THINK --
25 AND I THINK THEY'RE GOING TO ARGUE ABOUT THE STATUTE OF

1 LIMITATIONS, BUT THERE IS CASE LAW THAT SAYS THAT'S NOT THE
2 COURT'S ONLY CONCERN. IF THERE IS THIS JOINT INVESTIGATION
3 WHERE THEY HAVE A HAND IN HIS ARREST AND HE BECOMES ACCUSED AT
4 THAT TIME --

5 THE COURT: I FEEL LIKE ALL THAT CASE LAW IS OLD, AND
6 I FEEL LIKE IT WAS BEFORE THE DUAL SOVEREIGNTY DOCTRINE HAS
7 REALLY BEEN DEVELOPED FROM THE SUPREME COURT LIKE IN THE 80'S.
8 IT SEEMED LIKE ALL THE CASES THAT YOU CITED WERE OLD, AND
9 BECAUSE OF THAT, I DIDN'T SEE ANYTHING THAT SAYS YOU CAN EVER
10 DO THIS. BECAUSE SOME OF THOSE CASES WERE PRETTY CLOSE
11 INCLUDING ONE THAT I WAS LIKE OH, MY GOD, THIS IS EXACTLY THE
12 CASE SHE HAS, AND THEN I FOUND A CASE THAT ABROGATED IT LATER,
13 YOU KNOW, BECAUSE THE CASE LAW HAD DEVELOPED AND THE SUPREME
14 COURT HAD DEVELOPED THIS DOCTRINE. SO IT LOOKED TO ME LIKE YOU
15 DIDN'T HAVE ANY CASES THAT UNDER ANY CIRCUMSTANCES HAS DONE
16 THIS.

17 MS. DURRETT: BECAUSE OF THE FACTS ARE DIFFERENT --

18 THE COURT: NO, THE FACTS ARE THE SAME. I MEAN I
19 THINK THERE ARE A LOT OF TIMES THAT THERE'S THESE JOINT -- WELL
20 MAYBE NOT. I GUESS YOU SAY BECAUSE THEY WERE ACTIVELY PRESENT
21 AT THE TIME IT MAKES A DIFFERENCE.

22 MS. DURRETT: AND BECAUSE THAT SAME LAW ENFORCEMENT
23 OFFICER OFFICER RICKS HAS BEEN INVOLVED IN ALL OF THESE
24 INVESTIGATIONS AGAINST MR. PENDERGRASS, AND IN HIS SEARCH
25 WARRANT HE SAYS THE FEDS ARE PURSUING A PROSECUTION AGAINST MR.

1 PENDERGRASS. SO THEY ALL KNOW THAT THEY'RE GOING TO PURSUE
2 HIM, BUT THEY DECIDE NOPE, HANDS OFF ON THIS ARREST, AND YOU
3 DON'T HAVE TO CHARGE HIM FOR FOUR MORE YEARS.

4 THE COURT: AND I HAVE MY FACTS WRITTEN WITH THAT
5 STATEMENT "FROM THE BEGINNING IT WAS ANTICIPATED THAT THIS WAS
6 GOING TO GO FEDERAL." I HAVE THAT, I THINK THAT LOOKS LIKE IT
7 FROM THE DOCUMENTS, BUT I DON'T KNOW THAT THAT MATTERS. THAT'S
8 WHAT I'M TRYING TO SAY. I'M PLANNING TO GIVE YOU THAT FROM THE
9 BEGINNING BECAUSE THEY WERE -- THE FEDS WERE THERE. THE FEDS
10 TOOK THE ELECTRONIC DOCUMENTS, AND I THINK THE DETECTIVE'S NOTE
11 SAYS THE FEDS ARE GOING TO PURSUE THIS CASE, SO I'M GOING TO
12 GIVE YOU THAT.

13 MS. DURRETT: IT'S A SHAM, RIGHT, THE IDEA THAT
14 THERE'S GOING TO BE SOME PROSECUTION IN FULTON COUNTY IS JUST
15 NOT TRUE.

16 THE COURT: SO WHAT DOES THE SHAM GET YOU? I KNOW
17 YOU'VE SAID THAT, YOU'VE THROWN THAT AROUND. I FEEL LIKE THAT
18 MAYBE COMES INTO THE FIFTH AMENDMENT ANALYSIS MAYBE, BUT I'M
19 NOT REALLY SURE, AND I WAS GOING TO ASK YOU ABOUT THAT, BUT YOU
20 DON'T HAVE ANY CASES WHERE ANYONE -- IN THE LAST 20 YEARS WHERE
21 ANY COURT HAS ALLOWED THAT, HAS SAID THAT SIXTH AMENDMENT RIGHT
22 ATTACHES FROM AN EARLIER ARREST WHERE THERE WAS NOT A
23 CORRESPONDING CRIMINAL COMPLAINT AND ARREST WARRANT.

24 MS. DURRETT: YOUR HONOR, I THINK THERE ARE CASES
25 THAT TALK ABOUT WHETHER IT JUST GILDS THAT PROSECUTION IF WE

1 END UP WITH THE SAME SET OF FACTS IN A LATER PROSECUTION, THEN
2 I DON'T THINK YOU CAN SAY THAT, AND I'M LOOKING AT FROM THE
3 ELEVENTH CIRCUIT 1996, SORRY IF THAT'S TOO OLD, BUT IT DOES
4 TALK ABOUT THAT GILDING WHERE WE'RE SAYING OKAY, YOU'VE GOT
5 THAT INITIAL ARREST OR INITIAL SET OF FACTS, AND THEN THIS
6 LATER PROSECUTION IT KIND OF TAGS ON TOP OF THAT.

7 AND SO I'M LOOKING AT UNITED STATES VERSUS DEROSE AND
8 IT'S 74 F.3D 1177, AND IT TALKS ABOUT THAT, AND IT TALKS ABOUT
9 THE CASES THAT I'VE CITED. IT SAYS THE NIXON COURT STATED THAT
10 IF THE CRIMES FOR WHICH THE DEFENDANT IS ULTIMATELY PROSECUTED
11 REALLY ONLY GILD THE CHARGE UNDERLYING HIS INITIAL ARREST AND
12 THE DIFFERENT ACCUSATORIAL DATES BETWEEN THEM ARE NOT
13 REASONABLY EXPLICABLE, THE INITIAL ARREST MAY WELL MARK THE
14 SPEEDY TRIAL PROVISIONS APPLICATION AS THE PROSECUTION FOR ALL
15 THE INTERRELATED OFFENSES.

16 THE COURT: OKAY.

17 MS. DURRETT: SORRY, I DIDN'T ARTICULATE THAT VERY
18 WELL, BUT I DID CITE NIXON IN MY BRIEF AND SOME OF THESE OTHER
19 CASES THAT TALK ABOUT THAT, BUT I THINK THAT'S THE POINT --

20 THE COURT: I THINK NIXON IS OLD, THOUGH, OLD MEANING
21 1970'S, I THINK. LET'S ME SEE. 81. AND AT LEAST -- SO I WAS
22 READING DOWELL WHICH IS A FIRST -- I'M NOT SURE IF ANYBODY
23 CITED THIS. IT'S A FIRST CIRCUIT CASE THAT TALKS ABOUT HOW
24 THINGS CHANGED ESSENTIALLY IN 82 WITH THE MCDONALD SUPREME
25 COURT CASE WHERE IT SAYS AN ARREST OR INDICTMENT BY ONE

1 SOVEREIGN WOULD NOT CAUSE THE SPEEDY TRIAL GUARANTEES TO BECOME
2 ENGAGED AS TO POSSIBLE SUBSEQUENT INDICTMENTS BY ANOTHER
3 SOVEREIGN, AND I KIND OF FEEL LIKE THAT'S A GAME CHANGER, SO
4 I'LL LOOK AT THIS ELEVENTH CIRCUIT CASE DEROSE; IS THAT WHAT
5 YOU SAID?

6 MS. DURRETT: YES, AND I WOULD THEN SAY THAT WE
7 DEFINITELY WANT THE COURT TO MAKE A DETERMINATION ABOUT WHETHER
8 HAVING FEDERAL OFFICERS PRESENT AT THE TIME OF ARREST AND
9 INVOLVED IN THE INVESTIGATION AND TAKING POSSESSION OF THE
10 EVIDENCE THAT WAS SEIZED MEANS THAT HE WAS NOT ARRESTED BY THE
11 FEDS BECAUSE I THINK HE IS. I MEAN IF THE COURT IS GOING TO
12 SAY LOOK, YOU HAVE TO HAVE A DEFINITE ARREST BY FEDERAL
13 OFFICERS, I'M GOING TO ASSERT THAT THAT HAPPENED IN THIS
14 CASE BECAUSE THEY WERE PRESENT, THEY WERE PART OF THE
15 INVESTIGATION.

16 THE COURT: BUT I MEAN YOU CAN'T JUST CHANGE THE
17 WORLD. HE WASN'T ARRESTED BY FEDERAL OFFICERS. HE DIDN'T COME
18 INTO FEDERAL COURT AND ANSWER FOR HIS CRIME. IF YOU'RE
19 ARRESTED BY FEDERAL OFFICERS, YOU COME IN HERE WITHIN ONE OR
20 TWO DAYS, AND WE SEE YOU AND, YOU KNOW, THERE'S A PROCESS, AND
21 THAT IS NOT WHAT HAPPENED, HE WAS ARRESTED AND WAS TAKEN INTO
22 STATE CUSTODY. I MEAN THAT'S LIKE -- THAT'S A TOUGH ONE TO
23 JUST KIND OF SAY THEY'RE THE SAME I THINK.

24 MS. DURRETT: RIGHT, BUT WE OBJECT -- I MEAN,
25 YOUR HONOR, I WOULD JUST ASK THAT YOU MAKE A SPECIFIC FINDING

1 ABOUT THAT BECAUSE I THINK THAT'S A REAL POINT OF ISSUE IN THIS
2 CASE.

3 THE COURT: OKAY. I THINK I DISAGREE WITH YOU ON
4 THAT POINT, BUT I WILL DO THAT CLEARLY SO IT'S SOMETHING THAT
5 IF YOU FEEL THE NEED TO TAKE UP, AND, OF COURSE, YOU CAN
6 RAISE THAT UNDER YOUR OBJECTIONS BECAUSE IT'S GOING TO BE AN
7 R&R, SO I THINK WHAT I'M GOING TO DO IS JUST STOP THERE ON THAT
8 POINT.

9 SO LET'S TALK ABOUT THE -- I MEAN IN MY WRITING I'M
10 JUST TELLING YOU HOW I'M GOING TO PUT THIS TOGETHER, AND SO
11 MOVING TO THE FIFTH AMENDMENT, TELL ME HOW THE RUSE CASES WHERE
12 THEY FIT IN. I'M JUST A LITTLE CONFUSED ON THAT.

13 MS. DURRETT: TO THE FIFTH AMENDMENT?

14 THE COURT: OR THAT THEY'RE IN THE SIXTH AMENDMENT?

15 MS. DURRETT: I THINK THEY'RE IN THE SIXTH AMENDMENT,
16 YOUR HONOR. I MEAN I THINK IT'S A SHAM TO SAY THAT FULTON WAS
17 EVER GOING TO PROSECUTE HIM. I JUST DON'T THINK THAT WAS GOING
18 TO HAPPEN, AND I THINK AT LEAST BY THE LATEST THE SPRING OF
19 2014 EVERYONE INVOLVED IN THE CASE KNEW THAT.

20 THE COURT: OKAY. AND SO WOULD YOU TAKE THAT TO THE
21 NEXT LEVEL, THOUGH, AND SAY EVEN IF YOU DON'T START THE CLOCK
22 IN SEPTEMBER OF 16, YOU SHOULD START THE CLOCK IN MAY OF 17 --
23 OH, NO, I GOT MY YEARS WRONG.

24 MS. DURRETT: 2014.

25 THE COURT: 2014 IS WHEN HE WAS ARRESTED.

1 MS. DURRETT: HE WAS ARRESTED IN SEPTEMBER OF 2013,
2 AND THE EMAILS, THE FEW EMAILS THAT WE HAVE SHOWING
3 COMMUNICATION BETWEEN FULTON COUNTY AND THE U.S. ATTORNEY'S
4 OFFICE ARE IN THE SPRING OF 2014, I THINK THEY ARE MARCH AND
5 MAY THAT WE HAVE, AND SHOWING THAT THEY'RE DOING SOME
6 INVESTIGATION ABOUT TERRELL MCQUEEN, AND THEN THERE'S THIS
7 MEETING THAT'S GOING TO BE HELD BETWEEN FULTON COUNTY AND MR.
8 BROWN.

9 THE COURT: OKAY. SO YOUR ARGUMENT WOULD BE EVEN IF
10 I DON'T GO WITH YOU ON THE ARREST, I SHOULD STILL START THE
11 CLOCK -- THE SIXTH AMENDMENT RIGHT SHOULD ATTACH IN MAY WHEN IT
12 WAS CLEAR THAT THE STATE WAS NOT GOING TO PURSUE THE CASE.

13 MS. DURRETT: RIGHT, AND HE HAD ALREADY BEEN
14 RELEASED, HE WAS RELEASED ON APRIL 2ND FROM PRETRIAL RELEASE IN
15 FULTON COUNTY AFTER THEY REPEATEDLY CONTACTED THE DA'S OFFICE
16 SAYING ARE YOU GOING TO PROSECUTE THIS PERSON, IF NOT WE'RE
17 GOING TO RELEASE HIM.

18 THE COURT: OKAY. AND THAT'S USING THAT RUSE KIND OF
19 SHAM ARGUMENT. TELL ME ABOUT THE FIFTH AMENDMENT.

20 MS. DURRETT: WE TALKED A LITTLE BIT ABOUT WHAT WE
21 THINK THE TACTICAL ADVANTAGE IS. BECAUSE I THINK WITH THE
22 FIFTH AMENDMENT WE HAVE TO SHOW PREJUDICE AND WE HAVE TO SHOW
23 THAT THERE WAS A DELIBERATE INTENTION TO DELAY THE PROCESS FOR
24 A TACTICAL ADVANTAGE.

25 I THINK A COUPLE OF THINGS AS FAR AS THE TACTICAL

1 ADVANTAGE GOES. ONE, NOW THEY'VE GOT THIS 404(B) EVIDENCE THAT
2 THEY SAY THEY'RE GOING TO USE WHICH CAME IN BECAUSE THEY KNEW
3 HE WAS GOING TO BE PROSECUTED IN THESE OTHER DISTRICTS BECAUSE
4 OFFICER RICKS IS THEIR MAIN OFFICER WHO'S PROSECUTING MR.
5 PENDERGRASS IN EVERY DISTRICT.

6 THE COURT: SO IS THIS AN ARGUMENT OF YOU SHOULD HAVE
7 PROSECUTED ME SOONER?

8 MS. DURRETT: YEAH. REMEMBER HE COULDN'T GET THE
9 DETAINER. I HAVE EVIDENCE NOW THAT HE WAS ELIGIBLE FOR
10 TRANSFER FROM A LOW SECURITY PRISON TO A MINIMUM SECURITY
11 FACILITY BUT WAS INELIGIBLE FOR THAT BECAUSE OF HIS DETAINER,
12 SO IT INCREASED HIS SECURITY POINTS.

13 THE COURT: SO I MEAN HE COULD HAVE USED THE
14 INTERSTATE AGREEMENT ON DETAINERS TO REQUEST THAT THOSE CHARGES
15 EITHER BE DROPPED OR HANDLED.

16 MS. DURRETT: RIGHT, AND SO I HAVE AN EXHIBIT WHERE
17 HE IS EMAILING THE STAFF OF THE PRISON ON DECEMBER 12TH, 2016.
18 I'LL MARK IT AS DEFENDANT'S EXHIBIT 1, AND HE IS SAYING I'M
19 CONTESTING THAT THERE IS A DETAINER AGAINST ME, RIGHT, BECAUSE
20 THERE ACTUALLY ISN'T A DETAINER. THERE'S THESE PENDING CHARGES
21 IN FULTON COUNTY, AND NOBODY IS SENDING A DETAINER, RIGHT, SO
22 MAY I APPROACH?

23 THE COURT: YES.

24 MS. DURRETT: SO HE'S WRITING TO THE PRISON SAYING
25 PER OUR PREVIOUS CONVERSATION REGARDING THE HALFWAY HOUSE, YOU

1 INDICATED I WAS INELIGIBLE FOR THE HALFWAY HOUSE DUE TO THE
2 DETAINER WHICH I CONTESTED I DON'T HAVE AND IN WHICH RECORDS
3 CLEARLY INDICATE I DON'T HAVE, AND SO HE IS DOING WHATEVER HE
4 CAN DO TO FIGURE OUT THE DETAINER IN 2016. HE JUST DOESN'T
5 KNOW THAT IT'S A DIFFERENT ENTITY THAT'S HOLDING HIM. THERE IS
6 NO ACTUAL DETAINER PLACED.

7 THERE IS THIS EMAIL THAT GOES OUT FROM THE JESUP
8 OFFICIALS TO THE FULTON COUNTY DISTRICT ATTORNEY'S OFFICE
9 SAYING WE HAVE INFORMATION THAT YOU HAVE CHARGES PENDING
10 AGAINST HIM, AND THEY WRITE BACK AND SAY THERE'S GOING TO BE AN
11 INDICTMENT IN 2017, AND THAT'S IT, AND THAT'S THE HOLD THAT'S
12 PLACED ON HIM, SO IT PREVENTS HIM FROM GOING TO A MINIMUM
13 SECURITY PRISON, AND IT PREVENTS HIM FROM GETTING THE HALFWAY
14 HOUSE PLACEMENT.

15 THE COURT: WHAT WROTE THAT EMAIL?

16 MS. DURRETT: SOMEONE FROM THE FULTON COUNTY DA'S
17 OFFICE.

18 THE COURT: BUT THEY DIDN'T SAY WHO WAS GOING TO BE
19 BRINGING THE INDICTMENT?

20 MS. DURRETT: RIGHT, AND WE KNOW WHO IT WAS, RIGHT?

21 THE COURT: AT THAT POINT PROBABLY THEY HAD ALREADY
22 TURNED OVER THEIR WHOLE FILE TO THE --

23 MS. DURRETT: WHICH IS WHY WE THINK WE NEED AN
24 EVIDENTIARY HEARING. I MEAN I DO THINK THERE'S SOME
25 INFORMATION IN HERE THAT SHOWS THERE WAS A TACTICAL DECISION, A

1 DECISION TO GAIN A TACTICAL ADVANTAGE AGAINST MR. PENDERGRASS,
2 AND I THINK I CITED FOR THE COURT IN A DIFFERENT FILING, HE HAD
3 AN ATTORNEY THAT WAS REPRESENTING HIM IN OHIO WHO WROTE TO
4 OFFICER RICKS AND SAID HEY, I WANT TO GET ACCESS TO THOSE
5 COMPUTERS THAT YOU HAVE, AND THEN RICKS SENT AN EMAIL TO THE
6 IRS AND POSTAL SERVICE WORKERS, THE AGENTS, AND SAYS I JUST
7 IGNORED THAT GUY, I JUST IGNORED THAT ATTORNEY SAID HE WANTED
8 ACCESS TO THOSE COMPUTERS.

9 SO THERE'S STILL A LOT GOING ON THAT WE DON'T HAVE
10 INFORMATION ABOUT. WE HAVE VERY SMALL PICTURES OF WHAT'S
11 HAPPENING, AND SO I UNDERSTAND THE COURT, YOU KNOW, IS SAYING
12 GIVE ME THE CASE LAW, AND WHAT I'M SAYING IS I'M MISSING PIECES
13 OF THE PUZZLE AS FAR AS PREJUDICE GOES AND THE REASON FOR THE
14 DELAY, BUT I DEFINITELY THINK SOMEONE WAS DELAYING THIS CASE TO
15 ENSURE THAT HE GETS THE MAXIMUM PENALTY IN OTHER PLACES.

16 HE COULD HAVE BEEN RELEASED TO A HALFWAY HOUSE 15 TO
17 17 MONTHS EARLIER THAN HE WAS RELEASED BASED ON THE DOCUMENTS
18 WE HAVE, BUT HE WASN'T RELEASED BECAUSE SOMEBODY WAS HOLDING
19 HIM. SO I JUST THINK WE'RE MISSING SOME OF THE INFORMATION WE
20 NEED.

21 THE COURT: DOESN'T YOUR PREJUDICE NEED TO GO TO HIS
22 DEFENSE?

23 MS. DURRETT: WELL, NO, NOT NECESSARY. SO THERE ARE
24 CASES, THE DOGGETT CASE IN PARTICULAR TALKS ABOUT HOW IT'S
25 DIFFICULT TO SHOW PREJUDICE TO YOUR DEFENSE AFTER SUCH AN

1 EXTENDED PERIOD OF TIME, AND SO IT CAN BE PRESUMED THAT THERE
2 IS PREJUDICE IN CERTAIN SITUATIONS, AND I THINK THAT'S WHERE WE
3 ARE HERE IS HE'S OLDER NOW, SOME OF HE WITNESSES MAY BE GONE,
4 SOME OF THE WITNESS' MEMORY MAY BE DIFFERENT, HIS MEMORY IS
5 CERTAINLY AFFECTED.

6 THE COURT: I MEAN YOU'RE SAYING HE HAS WITNESSES WHO
7 MIGHT BE -- I MEAN THAT'S A LITTLE VAGUE, RIGHT? SOME OF THEIR
8 WITNESSES MIGHT BE GONE. IT MIGHT BE BAD FOR THE GOVERNMENT
9 BECAUSE THEIR CASE COULD GET HARDER TO PROVE. DOES HE HAVE
10 WITNESSES THAT ARE GOING TO BE ABLE TO HELP HIM? I MEAN THESE
11 CHARGES SEEM PRETTY, YOU KNOW, PAPER INTENSIVE.

12 MS. DURRETT: THAT'S ANOTHER GOOD POINT, YOUR HONOR,
13 ON PAPER ALL OF THE ALLEGATIONS ARE AGAINST MR. MCQUEEN, RIGHT,
14 AND SO NOW THE GOVERNMENT SAYS HAHA, BUT WE HAVE THESE 404(B)
15 ALLEGATIONS THAT WE CAN BRING IN FROM ANOTHER DISTRICT, SO WHAT
16 HAVE IS A WEAK CASE AGAINST MR. PENDERGRASS, BUT BECAUSE WE
17 WAITED SO LONG AND LET HIM GET PROSECUTED SOMEWHERE ELSE, NOW
18 WE CAN BRING THOSE IN AGAINST HIM HERE TO MAKE OUR CASE
19 STRONGER.

20 SO AS FAR AS WITNESSES THAT ARE MISSING, CERTAINLY
21 ALL OF THE EVIDENCE IN OUR OPINION SO FAR HAS SHOWN THAT MR.
22 MCQUEEN WAS THE ONE COMMUNICATING WITH OFFICERS OR PEOPLE WHO
23 WORKED AT THE CITY OF ATLANTA, BUT THERE MAY BE PEOPLE THERE
24 WHO CAN TESTIFY OR WHO WOULD HAVE BEEN ABLE TO TESTIFY THAT
25 THEY DIDN'T HAVE CONTACT WITH MR. PENDERGRASS ON THIS.

1 THE COURT: OKAY.

2 MS. DURRETT: IT'S HARD TO SHOW A NEGATIVE, RIGHT.
3 IT'S HARD TO SHOW WE WOULD HAVE HAD THIS EXCULPATORY EVIDENCE,
4 AND SOME OF THE CASES TALK ABOUT HE HAD NO REASON TO BE SITTING
5 IN HIS CELL MAKING NOTES ABOUT THIS OR TRYING TO FIGURE OUT
6 WHAT HIS DEFENSE WAS BECAUSE FULTON COUNTY WAS NOT PROSECUTING
7 HIM, AND HE KNEW THAT, AND HE KEPT TELLING THE OFFICIALS THERE
8 ARE NO CHARGES AGAINST ME, THERE IS NO DETAINER AGAINST ME. SO
9 HE HAD NO REASON TO BE RECORDING WHAT HE THOUGHT HIS DEFENSE
10 SHOULD BE OR WHO THE WITNESSES SHOULD BE UNTIL 2017, AND I DO
11 THINK HE WAS IMPAIRED BY THAT.

12 THE COURT: OKAY. THANKS. MR. BROWN, WHAT DO YOU
13 HAVE TO SAY. YOU CAN GO IN ANY ORDER. I WAS INTERESTED IN THE
14 TIMELINE, AND MS. DURRETT I THINK, YOU KNOW, FRUSTRATINGLY
15 EXPRESSED THAT WE DON'T KNOW WHAT THE TIMELINE WAS, WHEN THE
16 STATE DECIDED NOT TO PURSUE IT, AND I THOUGHT TO THE EXTENT YOU
17 WOULD IF YOU WOULD JUST TELL US THAT FROM YOUR PERSPECTIVE THAT
18 WOULD BE HELPFUL.

19 MR. BROWN: YES, I MEAN I KNOW THE QUESTION YOU HAD
20 IN YOUR ORDER, JUDGE, WAS WHEN DID THE GOVERNMENT LEARN THAT
21 FULTON COUNTY DID NOT INTEND TO PURSUE A CASE AGAINST THE
22 DEFENDANT, AND THE FIRST THING I'LL SAY IS I PROVIDED, THE
23 GOVERNMENT PROVIDED ALL THE EMAIL COMMUNICATIONS THAT THE
24 AGENTS HAD WITH THE LOCAL POLICE DETECTIVE, THAT OUR OFFICE HAD
25 WITH OUR INVESTIGATORS AS WELL AS THE APD INVESTIGATOR, AND I

1 WENT BACK AND LOOKED AT MY EMAILS, AND I RECALL THE ONLY EMAIL
2 IN THERE THAT CITES THAT KIMBERLY BURROUGHS, WHO WAS AN ADA
3 FROM FULTON COUNTY, WAS GOING TO REACH OUT TO ME, AND I RECALL
4 HAVING A CONVERSATION WITH HER BECAUSE SHE THOUGHT THERE WAS A
5 SEPARATE INVESTIGATION BY THE ATTORNEY GENERAL'S OFFICE.

6 BUT TO ANSWER THAT QUESTION DIRECTLY, THE GOVERNMENT
7 NEVER LEARNED WHEN FULTON COUNTY WAS NOT GOING TO PROSECUTE THE
8 CASE. WE'RE DUAL SOVEREIGNS. IN EVERY SINGLE CASE THAT I'VE
9 HAD IN THE 13 YEARS I'VE BEEN IN THIS OFFICE, ANY TIME I HAVE
10 CONTACT WITH AN ADA OR ANY ADA'S, IT'S ALWAYS DO WHATEVER YOU
11 WANT WITH YOUR CASE, DON'T WAIT ON US, DO WHAT YOU'RE GOING TO
12 DO --

13 THE COURT: I KNOW, BUT TO THE EXTENT YOU KNEW --

14 MR. BROWN: TO THE EXTENT I KNOW IS I THINK IT WOULD
15 HAVE BEEN AROUND MAY 2014 THAT I RECALL, BUT I NEVER RECALL A
16 CONVERSATION OR AN EMAIL WHERE THEY SAY LISTEN, WE'RE NOT GOING
17 TO GO FORWARD WITH OUR PROSECUTION. I DON'T RECALL THAT. I DO
18 HAVE --

19 THE COURT: IT'S IN MY R&R I SAY AT SOME POINT
20 PROBABLY IN MAY 2014 --

21 MR. BROWN: I THINK THAT WOULD BE --

22 THE COURT: -- FULTON COUNTY PROBABLY DECIDED THAT IT
23 WAS NOT GOING TO PURSUE THIS.

24 MR. BROWN: TO THE BEST OF MY RECOLLECTION, YES,
25 JUDGE, MAY 2014.

1 THE COURT: SO LET'S JUST ASSUME THAT THOSE ARE THE
2 FACTS FROM THAT BECAUSE WE DON'T HAVE THEM HERE. WE HAVEN'T
3 HAD THIS EVIDENTIARY HEARING THAT THEY WANT, BUT LET'S JUST GO
4 AHEAD AND ASSUME THAT THAT'S WHAT HAPPENED, THAT'S WHEN YOU
5 WERE EMAILING WITH THEM.

6 MR. BROWN: RIGHT.

7 THE COURT: DO YOU KNOW WHEN THE FILE WAS
8 TRANSFERRED?

9 MR. BROWN: THE FILE MEANING THE ATLANTA POLICE
10 DEPARTMENT DETECTIVE'S FILE, THE GOVERNMENT RECEIVED THAT, AND
11 I WROTE THAT DOWN, ON NOVEMBER 19TH, 2018 IS WHEN WE HAD THE
12 DETECTIVE COME TO OUR OFFICE TO PREP FOR TRIAL, AND I ASKED HIM
13 TO BRING HIS FILE.

14 HE WENT TO APD, GOT HIS FILE, BROUGHT IT TO US, AND
15 WE WENT OVER IT WITH HIM, PREPPED HIM FOR TRIAL, AND HE LEFT
16 HIS FILE THERE BECAUSE HE WAS GOING TO BE BACK FOR TRIAL IN TWO
17 OR THREE WEEKS, AND THAT'S WHEN WE HAD THE DETECTIVE'S FILE.
18 BEFORE THAT WE HAD NO OTHER RECORDS FROM THE DETECTIVE'S FILE.

19 THE COURT: OKAY. SO IT WASN'T LIKE IN 2014 THEY
20 SAID WE'RE NOT GOING TO DO IT, AND BY THE WAY, HERE'S A BIG
21 NOTEBOOK?

22 MR. BROWN: CORRECT. I MEAN I'M NOT GOING TO REHASH
23 WHAT YOU'VE ALREADY SAID, BUT THERE IS NO CASE LAW SUPPORTING
24 THE DEFENDANT'S ARGUMENT UNDER THE SIXTH AMENDMENT THAT THE
25 ACTUAL ARREST BY THE STATE SOMEHOW IS THE TIME THAT THE COURT

1 SHOULD CONSIDER IN RELATING TO -- IN TERMS OF A SPEEDY TRIAL
2 ISSUE UNDER THE SIXTH AMENDMENT. IT'S JUST NOT THERE. THERE
3 IS NO CASE LAW.

4 I SAW THE FIRST CIRCUIT CASE THAT WAS DIRECTLY ON
5 POINT, BUT IT WAS ABROGATED BY THE SUPREME COURT IN ANOTHER
6 FIRST CIRCUIT CASE THAT COMES RIGHT AFTER THAT THAT SAYS YEAH,
7 THIS CAN'T HAPPEN, THEY'RE DUAL SOVEREIGNS, SO I WON'T GET INTO
8 ALL THAT. I THINK THE CASE LAW IS CRYSTAL CLEAR.

9 I THINK THE DEFENSE IS REALLY STRETCHING, BUT THERE
10 IS NO CASE LAW SUPPORTING HER POSITION AT ALL. ZERO. SHE'S A
11 VERY GOOD ADVOCATE. SHE'S LOOKED FOR MONTHS, AND SHE HASN'T
12 FOUND ANY BECAUSE NONE EXISTS. SO, THEREFORE -- SO THAT'S ON
13 THE SIXTH AMENDMENT I THINK IS CRYSTAL CLEAR, THERE IS NO
14 AUTHORITY SUPPORTING HER POSITION AT ALL.

15 THE COURT: I THINK THAT'S HOW I'M GOING TO WRITE MY
16 R&R. SO LET'S MOVE ON TO THE FIFTH, THE FIFTH SEEMS A LITTLE
17 BIT -- THERE'S MORE GOING ON WITH THE FIFTH AMENDMENT.

18 MR. BROWN: I MEAN THE PROBLEM WITH THE FIFTH
19 AMENDMENT AND I STATED IT WHEN THE GOVERNMENT RESPONDED BACK IN
20 FEBRUARY OF 2019 IS THE DEFENDANT HASN'T MET THEIR BURDEN AT
21 ALL.

22 WHAT SHE JUST GOT UP BEFORE YOU AND IT WILL BE ON THE
23 RECORD ARE MERE ALLEGATIONS OF ANY KIND OF TACTICAL ADVANTAGE
24 THE GOVERNMENT WOULD ACTUALLY GAIN. THERE WAS NONE.

25 THE COURT: WHAT ABOUT THE 404(B) THAT SEEMED LIKE A

1 CONCRETE EXAMPLE OF SOMETHING?

2 MR. BROWN: THAT'S NOT A CONCRETE EXAMPLE OF ANY
3 TACTICAL ADVANTAGE. THE GOVERNMENT COULD HAVE USED THAT
4 IRRESPECTIVE OF A CONVICTION. SO THERE'S NO ADVANTAGE BY
5 DELAYING THIS CASE. THERE'S NO ADVANTAGE.

6 I MEAN THIS IS REALLY INTERESTING, YOU KNOW, SHE'S A
7 VERY GOOD ADVOCATE AND SHE'S ZEALOUS, BUT THERE'S NOTHING
8 THERE. WE PROVIDED OVER 136 PAGES OF EMAIL COMMUNICATIONS.
9 THERE IS NO CONCERTED EFFORT BASED ON THE EVIDENCE IN THIS
10 CASE. THERE'S NOTHING. SO WHAT SHE SAID IS BARE ALLEGATIONS,
11 HIS WITNESSES MAY HAVE HAD MEMORY. SHE HASN'T BROUGHT ONE
12 WITNESS WHO SAID YOU KNOW WHAT I WOULD HAVE REMEMBERED
13 SOMETHING BACK THEN BUT NOW I DON'T.

14 IT'S BARE ALLEGATIONS AND THE COURTS ROUTINELY STATE
15 THAT'S NOT ENOUGH. SO THERE'S NOT ENOUGH FOR A HEARING.
16 THERE'S NOT ENOUGH FOR THIS COURT TO CONSIDER HER ALLEGATION
17 UNDER THE FIFTH AMENDMENT. THERE'S NOTHING HERE. AND QUITE
18 FRANKLY IF YOU LOOK AT IT -- I DIDN'T BRING THE POINT HERE, BUT
19 SHE MAKES ONE ARGUMENT THAT THIS IS SOMEHOW THE GOVERNMENT'S
20 PLAN TO HAVE HIM STRUNG ALONG BY FULTON COUNTY AND KEEP THIS
21 CASE OPEN. THERE IS NO TACTICAL ADVANTAGE WHATSOEVER, AND WHAT
22 THE COURT JUST INTIMATED TO THE 404(B) WE COULD'VE USED THAT
23 IRRESPECTIVE OF THE CONDITION, JUDGE, SO THERE'S NO ADVANTAGE.
24 ZERO. YOU TOUCHED ON IT EARLIER --

25 THE COURT: I THINK SHE ALSO, MR. PENDERGRASS ALSO

1 ASSERTS THAT BY WAITING UNTIL HE HAD COMPLETED A SENTENCE ON
2 THE FIRST ONE BEFORE INDICTING HIM ON THE SECOND ONE LOOKS LIKE
3 THAT'S TRYING TO PREVENT HIM FROM MAYBE GETTING A CONCURRENT
4 SENTENCE, SOMETHING LIKE THAT.

5 MR. BROWN: ONCE AGAIN THAT'S NOT A TACTICAL
6 ADVANTAGE FOR THE GOVERNMENT'S PROSECUTION OF THE DEFENDANT,
7 NUMBER 1. NUMBER 2, THERE'S NO EVIDENCE THAT HAPPENED, AND
8 NUMBER 3 --

9 THE COURT: WELL, THE TIMELINE LOOKS LIKE THAT'S WHAT
10 HAPPENED. I MEAN YOU HAVE THE CASE FOR THREE YEARS, AND YOU
11 WAIT UNTIL HE'S JUST ABOUT TO BE RELEASED, AND THEN YOU INDICT
12 HIM, BUT IS THAT A TACTICAL ADVANTAGE?

13 MR. BROWN: I MEAN THE LAW IS REALLY CLEAR AS TO WHAT
14 THEY MUST SHOW UNDER THE FIFTH AMENDMENT, AND YOU TALKED ABOUT
15 ONE OF THE TWO -- THE CASE LAW IS REALLY CLEAR. WHAT DID IT
16 SAY? ONE, THE DELAY CAUSED ACTUAL PREJUDICE OF THE CONDUCT OF
17 HIS DEFENSE. THE DEFENDANT MUST SHOW. HASN'T SHOWN ANY. TWO,
18 THAT THE DELAY WAS A PRODUCT OF DELIBERATE ACTION BY THE
19 GOVERNMENT DESIGNED TO GAIN A TACTICAL ADVANTAGE IN THE
20 PROSECUTION.

21 SO EVEN WE WERE TO SAY SOMEHOW THE GOVERNMENT DID
22 THAT, WE WAITED UNTIL THE VERY END BEFORE HE WAS RELEASED, AND
23 THEN WE INDICTED HIM, WHAT TACTICAL ADVANTAGE DOES THAT HAVE IN
24 THE GOVERNMENT'S PROSECUTION OF THIS CASE? THIS CASE AS THE
25 COURT KNOWS FROM LOOKING AT THE RECORD, THIS IS A DOCUMENT

1 CASE.

2 DEFENSE COUNSEL INDICATED EARLIER THAT WELL THE
3 EVIDENCE IS ALL AGAINST MR. MCQUEEN. NO, IT'S NOT. THE
4 EVIDENCE IS REALLY STRONGLY AGAINST THE DEFENDANT. HE
5 CONTROLLED THE BANK ACCOUNTS IN WHICH FRAUDULENT FUNDS WERE
6 OBTAINED. HE USED THAT MONEY FOR HIMSELF AND PAID MR.
7 MCQUEEN. WE HAVE A STILL PHOTOGRAPH OF HIM IN THE BANK CASHING
8 THE MAJORITY OF THE CHECKS IN THE INDICTMENT. A BANK ACCOUNT
9 THAT HE CONTROLLED. HE CASHED THEM. HE'S THERE WITH MR.
10 MCQUEEN, AND THEN THE MONEY GOES TO HIM. SO HE'S THE SOLE
11 CONTROLLER OF THE BANK ACCOUNT. THERE'S NO TACTICAL ADVANTAGE
12 TO WAIT UNTIL THE VERY END. SO I KNOW SHE'S TRYING TO MAKE
13 SOME ARGUMENTS, BUT THEY'RE JUST NOT THERE.

14 THE COURT: SO WOULD YOU SAY POSSIBLY RESULTING IN A
15 HIGHER OR LONGER NUMBER MONTHS INCARCERATED WHEN CONSIDERED IN
16 CONJUNCTION WITH THE OTHER CASE, IS THAT NOT A TACTICAL
17 ADVANTAGE?

18 MR. BROWN: IT'S NOT A TACTICAL ADVANTAGE OF SOMEHOW
19 MAKING OUR CASE STRONGER AGAINST HIM. I MEAN IT COULD HAVE THE
20 ADVANTAGE OF HIM SERVING ADDITIONAL TIME POSSIBLY, SURE, BUT IT
21 DOESN'T RELATE TO A TACTICAL ADVANTAGE WE GAIN IN OUR
22 PROSECUTION. THERE'S NO TACTICAL ADVANTAGE IN THE PROSECUTION
23 OF THIS CASE BASED ON THE CHARGES IN THE INDICTMENT BY DOING
24 THAT. THERE'S NONE. THERE IS -- AND SHE HASN'T EVEN COME UP
25 WITH ONE.

1 SO WHAT YOU'RE TALKING ABOUT IS A CONSEQUENCE OF
2 POSSIBLY DOING THAT, BUT THAT'S NOT A TACTICAL ADVANTAGE AS IT
3 RELATES TO THE PROSECUTION OF THE CASE, AND THAT'S WHAT THE
4 COURTS TALK ABOUT. SO IT'S NOT MAKING THE SENTENCE LONGER, HIM
5 SERVING MORE TIME, WHO KNOWS WHAT THE JUDGE WOULD HAVE DONE IF
6 HE PLED GUILTY AND IT WAS CONCURRENT OR NOT, BUT THAT'S BESIDE
7 THE POINT. THERE'S NO TACTICAL ADVANTAGE IN THE PROSECUTION BY
8 DOING THAT, JUDGE, AND SHE HASN'T COME UP WITH ONE.

9 SO I MEAN I THINK THIS CASE IS, YOU KNOW, CERTAINLY
10 IT'S BEEN AROUND FOR A WHILE, AND THE LAST YEAR WE'VE BEEN
11 GOING BACK AND FORTH WITH MOTIONS. DEFENSE COUNSEL HAS HAD A
12 NUMBER OF EXTENSIONS IN FILING THEIR RESPONSES, AND THE
13 GOVERNMENT HAS DONE WHAT IT'S SUPPOSED TO DO, AND EVERYTHING
14 THE COURT ASKED THE GOVERNMENT HAS DONE. I THINK THIS CASE
15 NEEDS TO MOVE ON AND GET TO A TRIAL.

16 I THINK THERE'S NOTHING THAT THE DEFENSE HAS BROUGHT
17 UP IN THEIR MOTIONS, THERE ARE MANY MOTIONS, THAT WOULD WARRANT
18 THIS COURT TO HAVE A FURTHER DELAY IN HAVING A HEARING BECAUSE
19 THE CASE LAW DOESN'T SUPPORT THEIR ARGUMENT. EVEN IF
20 EVERYTHING SHE SAID WERE TRUE AS RELATING TO THE SIXTH
21 AMENDMENT DOESN'T MAKE A DIFFERENCE.

22 THE COURT: WERE YOU PERSONALLY AWARE THAT THEY WERE
23 TRYING TO RELEASE HIM TO THE HALFWAY HOUSE?

24 MR. BROWN: I HAD NO KNOWLEDGE OF THAT, JUDGE. I
25 MEAN I NEVER HAD KNOWLEDGE ABOUT THAT. SO THAT WAS NO

1 ADVANTAGE THE GOVERNMENT WOULD'VE HAD. I HAD NO -- THE ANSWER
2 IS NO.

3 THE COURT: I MEAN THAT'S JUST A FACT THAT WE DON'T
4 LIKE, RIGHT? I DON'T LIKE THE FACT THAT THIS WAS SITTING.
5 THEY KNEW FOR YEARS THEY WEREN'T GOING TO PURSUE THESE CHARGES,
6 AND BECAUSE OF THAT HE DIDN'T GET TO GO TO THE HALFWAY HOUSE.
7 HE'S NOT ACTUALLY RELEASED EARLIER THAN HE WOULD HAVE BEEN
8 INCARCERATED BUT THROUGH THE HALFWAY HOUSE, BUT THAT'S A FACT
9 THAT I DON'T LIKE --

10 MR. BROWN: RIGHT.

11 THE COURT: -- AND I KNOW JUDGE TOTENBERG IS NOT
12 GOING TO LIKE. I'M JUST ASKING YOU IF YOU KNEW THAT WAS
13 HAPPENING.

14 MR. BROWN: NO KNOWLEDGE, AND QUITE FRANKLY EVEN
15 THOUGH THIS IS NOT PARTICULARLY RELEVANT BUT IT'S TRUTHFUL, AS
16 RELATES TO THIS CASE OR THE DELAY, IT'S IN THE EMAILS WE
17 PROVIDED TO DEFENSE COUNSEL, THERE WERE LOTS OF COMPUTERS,
18 THERE WERE LOTS OF DOCUMENTS, AND THERE WAS A BACKLOG WITH THE
19 POSTAL SERVICE IN ANALYZING ALL THIS, SO FULTON COUNTY COULD
20 HAVE AND SHOULD HAVE GONE FORWARD WITH THEIR CHARGES.

21 WE WERE LOOKING FOR ADDITIONAL CHARGES BECAUSE THERE
22 WAS CONDUCT IN THIS CASE GOING BACK MANY YEARS IN WHICH HE HAD
23 THIS KIND OF BUSINESS, AND WE WERE SPENDING OUT DOZENS OF
24 SUBPOENAS TRYING TO SEE IF THERE WERE OTHER CHARGES AND OTHER
25 VICTIMS. SO THAT'S WHY THE CASE TOOK SO LONG, BUT ONCE AGAIN

1 THAT'S NOT EVEN RELEVANT TO THIS COURT'S CONSIDERATION OF THE
2 FACTS AND LAW BEFORE IT.

3 THE COURT: ALL RIGHT. THANK YOU.

4 MR. BROWN: THANK YOU.

5 MS. DURRETT: I DON'T THINK THEY SAID WHEN THEY GOT
6 THE FILE FROM FULTON COUNTY OR IF THEY EVER GOT A FILE FROM
7 FULTON COUNTY. I DON'T KNOW IF THE COURT IS GOING TO PRESUME
8 THAT THEY GOT IT IN APRIL OR MAY OF 2014.

9 THE COURT: I THOUGHT IT WAS THE FILE, THE BIG
10 NOTEBOOK --

11 MS. DURRETT: THE APD FILE, AND THEN REMEMBER WHEN WE
12 SUBPOENAED FULTON COUNTY THAT ATTORNEY WROTE BACK AND SAID WE
13 DON'T HAVE A FILE FOR THIS PERSON, AND WE ACCIDENTALLY HAD THE
14 CASE LEFT OPEN IN OUR ODYSSEY SYSTEM, BUT WE'VE CLOSED IT NOW,
15 SO WE DON'T HAVE A FILE FOR HIM. SO DESPITE THE FACT THAT THEY
16 HAD AN OPEN CASE FOR HIM FOR SIX YEARS, THEY HAD NO FILE AT THE
17 DISTRICT ATTORNEY'S OFFICE FOR MR. PENDERGRASS.

18 THE COURT: I DON'T THINK THERE'S EVIDENCE THAT
19 FULTON COUNTY'S FILE WAS SENT TO THE U.S. ATTORNEY'S OFFICE. I
20 THOUGHT --

21 MS. DURRETT: THERE'S EVIDENCE THAT THEY NEVER HAD A
22 FILE FOR MR. PENDERGRASS, AND I THINK THAT'S TELLING, RIGHT,
23 BECAUSE IT WAS THE U.S. ATTORNEY'S OFFICE THAT WAS PROSECUTING
24 HIM, NOT THE FULTON COUNTY DISTRICT ATTORNEY'S OFFICE BECAUSE
25 THEY DIDN'T HAVE A FILE FOR HIM EVEN AFTER THEY SEARCHED THEIR

1 ARCHIVES WHEN WE SUBPOENAED THEM. SO THAT'S ONE POINT.

2 THE SECOND THING IS THE GOVERNMENT, I THINK,
3 REPRESENTED THAT THEY GAVE US 130 PAGES OF EMAILS OR SOMETHING
4 LIKE THAT. MAYBE I'M MISREMEMBERING THIS, BUT IF THEY'RE
5 SAYING THAT THERE'S 130 PAGES OF EMAILS BACK AND FORTH BETWEEN
6 THE FULTON COUNTY DA'S OFFICE, I HAVE TWO. ONE THAT SAYS WE'RE
7 GOING TO HAVE A MEETING, AND THEN THIS OTHER EMAIL BETWEEN THE
8 POSTAL SERVICE AND JEFF BROWN AND THE IRS SAYING WE'RE STILL
9 INVESTIGATING MR. MCQUEEN. SO IF THERE ARE ADDITIONAL EMAILS
10 EITHER I HAVE MISSED THOSE, OR I DON'T BELIEVE THEY'VE BEEN
11 PRODUCED TO ME. SO I GUESS I'D LIKE THE RECORD CLEAR ON THAT.

12 THEN HE TALKED ABOUT THE INVESTIGATION OH, WE WERE
13 STILL SENDING OUT SUBPOENAS, AND THAT'S THE REASON FOR THE
14 DELAY. WELL THE LAST THING THAT'S CHARGED IN THE INDICTMENT IS
15 FROM MAY OF 2013, AND I DON'T THINK THERE WAS ANY FURTHER
16 INVESTIGATION OF THE CASE, NOTHING NEW HAPPENED THAT I CAN TELL
17 FROM THE CASE FROM THE TIME HE WAS ARRESTED UNTIL THE TIME HE
18 WAS INDICTED. SO THE IDEA THAT WE WERE STILL INVESTIGATING OR
19 THERE WAS GOING TO BE MORE ADDITIONAL INFORMATION, THAT
20 CERTAINLY HASN'T BEEN BORNE OUT BY ANYTHING THAT I'VE SEEN.

21 AND THEN, YOU KNOW, HE'S TALKED ABOUT HOW THERE'S NO
22 TACTICAL ADVANTAGE, I HAVEN'T SHOWN ANY PREJUDICE, LIKE I SAID
23 THERE IS CASE LAW THAT TALKS ABOUT THE IDEA THAT THE INDICTMENT
24 OR THE COMPLAINT PUTS YOU ON NOTICE, THAT YOU NEED TO START
25 PREPARING A DEFENSE, THAT YOU NEED TO GET AN ATTORNEY, OR YOU

1 NEED TO START THINKING ABOUT HOW YOU'RE GOING TO DEFEND THIS
2 CASE, AND THE IDEA THAT HE'S TOLD IN APRIL OF 2014 FULTON
3 COUNTY IS NOT PROSECUTING YOU, WE ARE LETTING YOU OFF PRETRIAL
4 RELEASE, AND THERE'S NOTHING HAPPENING, AND THEN WHEN IT'S
5 RAISED IN THE BUREAU OF PRISONS AND THEY SAY OH, FULTON COUNTY
6 HAS CHARGES AGAINST YOU, HE WRITES BACK AND SAYS THEY DON'T,
7 THERE IS NO DETAINER, SO HE IS STILL UNDER THE IMPRESSION NO
8 ONE IS PROSECUTING ME FOR THIS CRIME, RIGHT, AND THAT'S IN
9 2016.

10 AND THEN ALL OF A SUDDEN IN 2017, THERE'S AN
11 INDICTMENT, AND NOW HE'S ON NOTICE, HEY, GUESS WHAT, YOU DO
12 NEED TO START PREPARING A DEFENSE, YOU DO NEED TO START MAKING
13 A LIST OF WITNESSES AND TRYING TO INTERVIEW PEOPLE WHO CAN COME
14 IN AND GIVE TESTIMONY ON YOUR BEHALF, THAT'S PREJUDICE, AND
15 THAT'S TACTICAL ADVANTAGE THAT THE GOVERNMENT GOT IN THIS
16 CASE. THANKS.

17 THE COURT: CAN YOU GIVE ME THE NAME OF ANY WITNESS
18 THAT IS NOW UNAVAILABLE THAT HE CAN THINK OF THAT WOULD HAVE
19 BEEN AVAILABLE THREE YEARS AGO?

20 MS. DURRETT: I DON'T, YOUR HONOR, BUT I'LL TALK WITH
21 HIM, AND WE'LL SUBMIT IT TO THE COURT.

22 THE COURT: THANK YOU. ANYTHING ELSE THAT YOU ALL
23 WANT TO ADD?

24 MR. BROWN: I WOULD JUST SAY THAT SHE TALKED ABOUT
25 THE RECORD OF 130 SOMETHING. IN FEBRUARY OF 2019 JUDGE

1 TOTENBERG ASKED THE GOVERNMENT TO PROVIDE ANY EMAIL
2 COMMUNICATIONS THAT IT HAD BETWEEN THE AGENTS, AGENTS
3 COMMUNICATIONS OR ANYTHING RELATED TO THE GOVERNMENT'S
4 COMMUNICATIONS. THERE ARE NO EMAILS BETWEEN THE GOVERNMENT AND
5 THE FULTON COUNTY DISTRICT ATTORNEY'S OFFICE. ZERO. I HAVEN'T
6 PROVIDED ANY BECAUSE THERE ARE NONE.

7 THE ONLY EMAILS -- SHE CITES AN EMAIL WHERE A FEDERAL
8 INVESTIGATOR SAID THAT THE ADA IS GOING TO REACH OUT TO ME AND
9 TALK TO ME ABOUT THE CASE, BUT THERE'S NO EMAILS. SO THE 136
10 PAGES I'M TALKING ABOUT IS THE 136 PAGES OF SUPPLEMENTAL
11 DISCOVERY THAT WAS PROVIDED ON MARCH 19TH, 2019 ORDERED BY THE
12 COURT TO TURN OVER ANY EMAIL COMMUNICATIONS YOU HAVE RELATING
13 TO THE FULTON COUNTY DISTRICT ATTORNEY'S OFFICE OR YOUR
14 INVESTIGATORS ABOUT THE INVESTIGATION OF THIS CASE. SO THAT'S
15 THE 136 PAGES I'M TALKING ABOUT, AND SHE'S RECEIVED THAT. SO
16 THERE ARE NO ADDITIONAL EMAILS, AND THERE ARE NO EMAILS THE
17 GOVERNMENT HAS WITH THE FULTON COUNTY DISTRICT ATTORNEY'S
18 OFFICE.

19 THE COURT: ALL RIGHT. ANYTHING ELSE?

20 MS. DURRETT: NO.

21 THE COURT: I APPRECIATE YOU ALL COMING IN AND
22 HELPING ME WORK THROUGH THIS, AND I'LL GET MY R&R OUT AS SOON
23 AS I CAN. THANK YOU. WE'LL BE IN RECESS.

24 (PROCEEDINGS CONCLUDED.)

25

1

2

C-E-R-T-I-F-I-C-A-T-E

3

4 UNITED STATES OF AMERICA

5 NORTHERN DISTRICT OF GEORGIA

6

7 I, ANDRE G. ASHLEY, DO HEREBY CERTIFY THAT I AM A
8 U.S. DISTRICT REPORTER FOR THE NORTHERN DISTRICT OF GEORGIA,
9 THAT I REPORTED THE FOREGOING AND THE SAME IS A TRUE AND
10 ACCURATE TRANSCRIPTION OF MY MACHINE SHORTHAND NOTES AS TAKEN
11 AFORESAID.

12 IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND ON
13 THIS 10TH DAY OF APRIL, 2020.

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19

S/ ANDRE G. ASHLEY
ANDRE G. ASHLEY
OFFICIAL COURT REPORTER
NORTHERN DISTRICT OF GEORGIA

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